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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/874,488 | 06/05/2001 | Thomas A. Gregg | POU998109US2 | 6420 |
| 23405 | 7590 | 12/05/2003 | EXAMINER | |
| HESLIN ROTHENBERG FARLEY & MESITI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203 | | | KANG, PAUL H | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2141 | 5 |
| DATE MAILED: 12/05/2003 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

224

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/874,488 | GREGG | |
| | Examiner | Art Unit | |
| | Paul H Kang | 2141 | |

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2,4</u> | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2141

1. Claims 1 and 2 were previously cancelled and claims 3-7 were newly added (paper no. 3). Claims 3-7 are now pending.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 3-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,442,613. Although the conflicting claims are not identical, they are not patentably distinct from each other because the context of the claimed invention is the same as the context of the patented invention.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

Art Unit: 2141

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 3 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Harriman et al., US Pat. No. 6,226,687 B1.

5. As to claim 3, Harriman teaches a method of controlling the flow of information across links between senders and receivers, said method comprising:

including in a packet a sequence number usable in maintaining delivery order of said packet, said packet having no memory address and requiring no explicit individual response

(Harriman, col. 2, line 12 – col. ^{3, LINE} 61); *OK*

sending said packet from a sender to a receiver across a link (Harriman, col. 2, line 12 – col. 61); and

using said sequence number to determine if said packet is in proper order for processing by said receiver (Harriman, col. 2, line 12 – col. 61).

Art Unit: 2141

6. As to claim 4, Harriman-Gregg teach said using comprises

comparing said sequence number with a sequence count of said receiver (Harriman, col. 2, line 12 – col. 4, line 52);

determining, when said comparing indicates an inequality, whether said sequence number is a predetermined amount more than said sequence count (Harriman, col. 2, line 12 – col. 4, line 52); and

indicating an error when said sequence number is not said predetermined amount more than said sequence count (Harriman, col. 2, line 12 – col. 4, line 52).

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harriman et al., US Pat. No. 6,226,687 B1, in view of Gregg, US Pat. No. 5,938,786.

9. As to claim 5, Harriman teaches the invention substantially as claimed. Harriman teaches a method of controlling the flow of information across links between senders and receivers, said method comprising:

including in a packet an indicator usable in determining whether another packet is to follow said packet (Harriman, col. 2, line 12 – col. 4, line 52);

sending said packet from a sender to a receiver across a link (Harriman, col. 2, line 12 – col. 4, line 52); and

using said indicator to determine if said another packet is to follow (Harriman, col. 2, line 12 – col. 4, line 52).

However, Harriman does not explicitly teach the indicator being a continue indicator. In the same field of endeavor, Gregg teaches a data packet transmission system wherein a continue indicator is used to determine whether another packet is to follow (See Gregg, col. 1, line 66 – col. 2, line 43 and col. 4, lines 49-65).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the continue indicator as taught by Gregg, into the packet processing system of Harriman for the purpose of efficiently determining the end of transmission.

10. As to claim 6, Harriman-Gregg teach an end of a buffer area is specified when said continue indicator is off (Gregg, col. 4, lines 49-65 and col. 6, line 38 – col. 8, line 15).

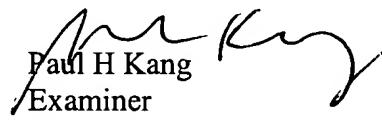
11. As to claim 7, Harriman-Gregg teach the method further comprising setting an error indication, when another packet is received for said buffer area and said continue indicator is off (Gregg, col. 6, line 38 – col. 8, line 15).

Art Unit: 2141

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul H Kang whose telephone number is (703) 308-6123. The examiner can normally be reached on 9 hour flex. First Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.


Paul H Kang
Examiner
Art Unit 2141